

## **ADDENDUM ONE: CONDITION OF THE U.S. GOVERNMENT'S TRUST MANAGEMENT SYSTEMS**

### **--SPECIAL TRUSTEE'S ASSESSMENT**

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#### **Special Trustee's Condition Assessment**

After a year long review of the U.S. Government's trust management systems, the Special Trustee has concluded that the undeniably poor quality of the trust management systems and the condition of the historical records effectively preclude the Federal Government from providing an accurate and timely accounting to American Indian trust beneficiaries and prevents the trustee from discharging its fiduciary duty to the beneficiaries in a legally acceptable manner. This can be demonstrated quantitatively:

1. The Reconciliation Project in January 1996 disclosed \$2.4 billion (32,319 transactions) for which source documentation could not be located. The point here is that these records should not be missing and would not be missing had the Federal Government followed conventional trust record keeping practices. Of particular concern is about \$575 million in unreconciled disbursements. Another concern is some \$4.1 billion of "reconciled" disbursements which did not have complete disbursement voucher packages. Notably over \$2 billion in large disbursement vouchers to Tribes in care of third parties did not have both tribal and other governmental signed authorization.
2. The Reconciliation Project also confirmed what the GAO calls the lack of a known universe of transactions and leases. This stems from the Federal Government's lack of an ability accurately to trace a collection to a source lease or contract. This, in turn, results from the lack of a consolidated accounts receivable (billing) system and master lease system.
3. At the end of 1994 there was about a two year backlog in bringing key land ownership and records up to date. It was estimated to take 104 staff years to eliminate the back-log, but rather than address the backlog the BIA reduced its Realty staff by 29% (126 staff to 90 staff) during 1995 and 1996, continuing the backlog. Because of staff and budget cuts in the last two years, the probate backlog is up to four years in certain areas.
4. There are 45,624 IIM accounts with \$27.7 million for individuals with no address or an incorrect address.
5. There are 27,519 IIM accounts with \$21.7 million held for individuals who were formerly minors. The vast majority of these monies should have been disbursed when the age of majority was reached.
6. There are \$42.2 million in Overdraft Interest Clearing Accounts resulting from interest mis-postings prior to 1993. These are non-earning assets which annually deprive current IIM account holders of over \$2 million.
7. There are general ledger differences of over \$28 million which should be cleared.
8. Continued maintenance of over 153,000 accounts (55% of total accounts) with balances less than \$10 is required at a significant operating cost.

9. There are 128,393 missing social security numbers for account holders with over \$175 million in their accounts.

10. Even with knowledge of the records management, storage and retrieval problems disclosed by the Reconciliation Project, the U.S. Government has taken no meaningful steps to improve records management, storage and retrieval. Worse, disaster recovery programs which backed up trust records processing were canceled in 1996, apparently due to lack of funding.

These conditions are unacceptable by any reasonable standards and continue to do significant harm and damage to American Indian trust beneficiaries. They are caused by inherent defects in the core trust management systems the government uses to manage the Indian lands and monies. These defective systems prevent the government from meeting the fiduciary, accounting and reporting standards required by the American Indian Trust Fund Management Reform Act of 1994 and standards of ordinary prudence applicable to all trustees, public or private.

The Special Trustee's Conceptual Strategic Plan addresses these issues and identifies several initiatives designed to rectify the problems and bring trust accounting and management systems up to commercial standards within three years. What is needed first is a complete overhaul of the four basic trust management systems. We must acquire a new:

1. trust asset and accounting management system.
2. accounts receivable data and billing system that uses lease-contract and land and ownership information.
3. trust, depository, payments and delivery system for IIM accounts.
4. land records and title recordation and certification system.
5. legislated solution to the problems caused by the fractionation of American Indian allo

Along with the overhaul of these core systems must come improvements to the general ledger system, record keeping and archiving, risk management, the technology center, disaster recovery and back-up assurance and organizational structure. Probate and appraisal backlogs must be eliminated and all trust records must be cleaned up prior to conversion. Finally, a significant investment must be made in the acquisition, retention and training of highly qualified trust management personnel.

In summary, the problems in the trust management systems are longstanding ones. Mismanagement and neglect have allowed the trust management systems, record keeping systems and risk management systems to deteriorate over a twenty to thirty year period and become obsolete and ineffective. For many of those years, including many years since 1990, the trust programs were seriously under staffed and under funded. The result was that the government increasingly was unable to keep pace with the rapid changes and improvements in technology, trust systems and prudential best practices taking place in the private sector trust industry. This gap continues today and will continue to increase until the reforms outlined in the strategic plan are funded and implemented. That is why they should be funded and implemented, immediately, regardless of if and when the Comprehensive Strategic Plan called for in the Reform Act of 1994 is approved. Each day the trust management systems remain status quo, the Federal Government's exposure to claims of mismanagement and liability will continue

to grow and is another day the Federal Government cannot meet its trust responsibilities to the American Indians.

### **Specific Problems In Need of Reform**

The fundamental problem is that the U.S. Government, using present systems, was, is and will continue to be unable to furnish beneficiary American Indian Tribes and individual Indians with an accurate and full accounting of trust funds. The difficulty lies with the historical and current:

1. lack of an effective trust asset, leasing and resource system which can be audited to determine that trust assets are being managed prudently and consistently in the best interest of the beneficiaries. The system is deprived of standardized and integrated asset management, credit and operating policies, procedures and practices. The system should be able to tie to and track from land and ownership records but such is not always the case.
2. lack of master lease system and a consolidated accounts receivable (billing) system which precludes appropriate documentation of lease management terms and conditions and an audit and comparison of general ledger entries to the amounts due under the lease contracts. The system in use does not accurately use lease-contract and ownership information for trust income verification, reconciliation, billing, payments, collection, accounting, disbursement, audit, asset quality review and compliance purposes.
3. lack of an effective IIM accounting system for collections, deposits and disbursements which leads to uncertainty over whether the right beneficiary was credited with the correct amount. The system in use is incapable of accurate and timely accounting and reporting and is not compatible with more efficient private sector systems capable of providing such financial services and new and improved financial services to American Indians as well.
4. lack of an effective land records and ownership system which prevents timely credit of income to the appropriate individual Indian or tribal account and precludes audits to determine whether the trust assets are fully utilized and receiving the highest rate of return consistent with trust and prudential standards. The current system is not accurate and system break-downs seem to be more the rule, rather than the exception.
5. lack of an adequate archives and record keeping system which has resulted in a massive loss of lease and contract records and the consequent inability to do acceptable audits and reconciliations. The technology services center is not a dedicated unit to trust management activities. Appropriate disaster/recovery and back-up assurance is lacking.
6. lack of an effective risk management system which prevents prudential audits, compliance reviews and quality ratings and appraisals.
7. lack of an organizational structure organized by function and dedicated exclusively to trust management.
8. lack of a permanent solution to the fractionation of American Indian allotment ownership.

At the core of many of the accounting and reconciliation problems is the lack of source documentation to support the general ledger entries. There is not a complete way to estimate the number of missing

documents, leases and contracts, but the BASIC RECONCILIATION effort disclosed the types of problems which prevent a full accounting:

1. There were 32,319 unreconciled transactions which totaled \$2.4 billion and which represented cash receipts, disbursement and internal transfer transactions posted to tribal accounts for which the supporting financial source documents were not located:

Unlocated Receipts:	\$1.1 billion
Unlocated Disbursements:	\$.8 billion
Unlocated Transfers:	\$.5 billion
Total	\$2.4 billion

2. Some offices of the Bureau of Indian Affairs have in the past sent trust and land leases and records to a federal records center where they are retained under federal records retention rules rather than under trust rules. The result was that many records were destroyed which should not have been destroyed. Some offices of the BIA followed federal retention rules for trust leases and contracts, which normally required retention of less than ten years after the leases or contracts expire. Thus, some records were destroyed which should not have been destroyed.
3. Some documents are missing for other reasons. For example, in one sampling, ten years of timber contracts were found to have been destroyed. Generally, the "Fill the Gap" part of the Reconciliation Effort was significantly curtailed because large numbers of leases and contracts could not be located.
4. There is not a complete system of redundant record keeping. Thus, no effective back-up exists if a record is destroyed or cannot be located for some other reason.

There are numerous problems and issues concerning IIM accounting which have been researched, reported on, and discussed in several internal and external reports. Some of these accounting and systems problems for the 387,631 IIM accounts with balances of approximately \$450 million have resulted in the following:

1. 12 different non-integrated databases to manage. File structures are obsolete. Data records are outdated and/or inaccurate. Automated systems applications and routines are not consistent and various versions of similar applications are used.
2. 16,828 duplicate accounts. These accounts should be researched and closed under an appropriate set of policies and procedures.
3. 45,624 accounts with \$27.7 million for individuals with no address or an incorrect address. Policies and procedures must be established on the steps to follow to locate missing persons and what to do if a person cannot be located. These accounts should be researched and placed in dormant status under appropriate policies and procedures if owners cannot be located within a reasonable period of time.
4. The Office of Trust Funds Management is responsible for accounting for monies held in trust for a minor judgment recipient until he/she reaches 18. There are 58,788 such accounts with \$143,617,096 in aggregate balances. But 27,519 accounts and \$21,735,681 are for individuals over 18 and one of the over 18 accounts contains \$490,121. These accounts should be

researched and resolved under an appropriate set of policies and procedures.

5. Special Deposit Accounts aggregating \$141,723,524 in 28,202 accounts are supposed to be a temporary repository for money until the ownership of the funds can be determined. Yet there are 6,119 accounts with \$2,273,074 which have had no activity in the last 18 months. These accounts should be researched and resolved as well under appropriate policies and procedures.
6. The database contains 21,572 accounts with \$37,543,163 for deceased individuals. There are 2,242 of these accounts which are coded as being closed estates. However, because of the probate backlog, there are \$787,625 which have not been distributed to heirs. This problem should be addressed by bringing the backlog current.
7. There are 270 accounts for individuals in the database which have overdrafts in the amount of \$314,042. No overdrafts are authorized. Overdraft prohibitions should be enforced.
8. As of September 30, 1996:
  1. 14,476 IIM Accounts had a balance of \$0 with no activity for 13 months and not coded for deletion.
  2. 14,906 IIM accounts had a balance between \$0 and \$1 with no activity for 13 months.
  3. 28,114 IIM accounts had no activity for 18 months and not coded for deletion.
  4. 128,393 IIM accounts had no Social Security Number or Taxpayer ID.

These accounts are expensive to administer and maintain. Policy and legal changes are required to eliminate them, escheat them or otherwise reduce them to levels that can be administered more efficiently and effectively.

9. Ownership of the land and its associated assets is critical to trust asset management and resulting trust income processes. The BIA systems and processes are currently not capable of establishing up-to-date and accurate land title records that are necessary for the lease management processes. In addition, significant backlogs in updating systems for land records revisions, additions and deletions exist. The time lags associated with probate (two-three year average) exacerbate the problem as well. Even if the records were up-to-date, the Bureau's current Land Records Information System (LRIS) does not interface with its Lease Management systems. Databases are separate even though they are inter-dependent and they contain redundant and conflicting information. There are also many instances reported that LRIS was often not available for trust asset management (e.g., leasing), due to hardware or communications problems.
10. Record retention and filing procedures at certain locations throughout the Bureau and for certain periods are not sufficient to document certain activities and account balances.
11. There is not an effective accounts receivable system in place to assure that all income due is collected and to assess late fees and interest when due. Field collections are not adequately controlled or deposited timely. Unwarranted delays exist between the receipt of money at Minerals Management Service and final distribution to the owners.
12. Poor internal controls and inconsistent policies and practices exist. The various audit reports that have been conducted on IIM related systems and activities have identified many cases of

inconsistent application of policies and procedures. Inconsistency prevents the accumulation and analysis of information within the BIA, making it difficult for the BIA to provide oversight and management, make management decisions, demonstrate accountability and develop confidence and credibility in the trust asset and trust funds management processes. Poor internal controls and inconsistent practices account for over 50% of the thirty consolidated problems identified in the IIM Related System Improvement Project Report of August 1995. According to that Report, this category of problems "pervades every function reviewed". Moreover the Report notes: "The Bureau has developed procedures and policies for a number of the problems and often, guidelines are in place. However, they are either unknown to the staff performing the function, not being followed, or not comprehensive enough to provide the requisite guidance."

13. Many of the BIA's leasing and other resource management actions result in an amount due from the lessee in payment of the benefit received from the leased resource, e.g., grazing fees. Unfortunately, the BIA's systems and processes do not create or record an amount due and they do not create and account for bills or notices. Except for revenues from minerals leases, the collection and follow-up on this trust asset income rests with the individual realty staff in the field. In some cases, BIA staff have developed P.C. software to perform leasing functions and as a by-product are able to issue bills for amounts due. Others have manual hard copy records that prompt action, but neither of these is generally practiced throughout the Bureau. The result is that it is possible that amounts due are not established, amounts due may be uncollected, or actions against lessees that may be necessary may not be taken. Further, with little opportunity to separate duties at the agency level, adequate internal control over the entire process becomes extremely difficult and costly and is often not possible.
14. The cash account at the U.S. Treasury is not verifiable due in part to inadequate Bureau procedures and also because the U.S. Treasury is not able to provide the Bureau with accurate information regarding cumulative balances.
15. The BIA's organizational alignment causes decision-making and management for IIM and tribal issues to be an intricate and complex coordination process and an ineffective one at times. Responsibilities fall within 16 separate organizations all reporting directly to one entity, which has direct line authority for every other Bureau organization and program. Further, the activities are carried out by over 100 field offices. The BIA's organizational structure prevents in many instances informed and expeditious decisions because of the number of entities involved and the number and complexity of the decisions their activities generate. The structure also results at times in trust management responsibilities of a higher order not receiving the attention and focus they deserve and/or being traded off against other Bureau priorities of a lower order. The BIA offices must expend significant resources to coordinate with managers, supervisors and staff across the Bureau to obtain cooperation. Coordination and cooperation often breaks down. Because the BIA is not organized and managed by function, all too often policies and procedures written for specific trust programs or functions are not universally followed because the staff that perform the activities take their direction from general managers in area or field offices, not the trust program offices.

### **Impact of Fractionated Ownership of Indian Lands on Trust Management Systems**

Another fundamental problem is fractionation of American Indian Allotment interests. The vast majority of accounting, basic record keeping and other operating problems affecting trust resource management, trust funds management and trust land records and ownership management originate

from one source: the ever increasing fractionation of undivided realty interests owned by Individual American Indian Allottees.

Fractionation is a direct result of the Federal Government's policies and laws relating to lands owned by the American Indians dating back to 1887.

As originally envisioned, allotments were to be held in trust by the United States for their Indian owners no more than 25 years, after which the land would be conveyed in fee simple to its Indian owners. Many allottees died without wills during the 25 year trust period, and it also became evident that many allottees continued to need Federal protection. Consequently, Congress enacted limited probate laws and authorized the President to extend the trust period for those individuals who were not competent to manage their lands. The presumption was, however, that at some point in the foreseeable future the lands would be conveyed to their Indian owners free of Federal restrictions. Nevertheless, Congress continued to extend the period of trust protection but did not amend the probate laws. Under the Indian probate laws, as individuals died, their property descended to their heirs as undivided fractional interests in the allotment. As the years passed, fractionation has expanded geometrically to the point where there are hundreds of thousands of tiny fractional interests. These fractional interests have nominal economic value but pose an enormous cost burden estimated to be about \$33 million per year on the Federal Government's trust management activities.

Congress attempted to address the fractionation problem with the passage of the Indian Land Consolidation Act (ILCA) in 1984. The ILCA authorized the buying, selling and trading of fractional interests, but most importantly it provided for the escheat to Tribes of interests of less than two percent. 55,000 of the two percent-or-less fractional interests have escheated since 1984, but the fractionation problem continues to worsen. Moreover, the *Youpee vs. Babbitt* 1997 Supreme Court Decision brings into question the legality of the escheated property since 1994, further complicating an already bad situation. Maintaining the heirship and land records and administering the land is inordinately expensive, and the administration of the records pertaining to the moneys earned by each individual allottee is equally expensive and difficult. In addition, utilization and conveyance of the fractionated property by the numerous owners is difficult because of the need to secure the numerous consents required. Finally, the difficulty in dealing with the fractionated interests often effectively precludes the highest and best use of the land for economic development and the maximization of investment income, thus diminishing its economic value.

The fractionated ownership of Indian lands is taxing the ability of the government to administer and maintain records on Indian lands. These "allotted" or individually-owned trust lands comprise approximately 11 million acres and, in size, exceed that of the States of Massachusetts, Connecticut and Rhode Island, put together. Fractionated heirship also threatens the integrity and viability of the Department's trust management systems. The problem cannot be addressed by the Tribes; it cannot be fully addressed by the Department of the Interior; it requires a federal legislative solution.

The Department of the Interior is charged by statute with maintaining Federal Indian land records on these hundreds of thousands of fractional interests and with probating the estates of every Indian individual who owns a fractional interest in an allotment. In many cases, the fractions are so small that the cost of administering the fractional interests far exceeds both their value plus any income derived therefrom.

Currently, calculation of fractionated lease ownerships may result in a fractional denominator that exceeds 26 digits. Depending upon the amount of lease income to be distributed, it is possible that

trust income may have to be collected for several years before sufficient income is collected to entitle an account holder to even one cent.

Some administrative complications that result from fractionated ownerships include the following:

- Detailed accounting records must be maintained for all transactions regardless of size, sometimes as little as \$0.03 may be distributed among seven account holders, complicating the accounting.
- In most cases, OTFM policy does not permit funds to be disbursed to the account holders until balances reach \$15, thus increasing the number of IIM accounts that require interest posting and other account maintenance activities.
- Funds sometimes remain in special deposit (suspense) accounts for long periods, according to OTFM, pending OTFM's receipt of ownership information from OTR's Land Title and Records program and realty staffs.

Currently, OTR maintains official federal Indian land title and beneficial (lease) ownership information. OTR's Land Title and Records program staff are responsible for determining ownership and encumbrance for each federal Indian tract of land and for certifying for the Federal Government that such ownership and encumbrance is accurate for all legal, title, and evidentiary purposes. However, due to continuing increases in fractionation, inadequate staffing, and inadequate systems, OTR has almost a 2-year (4 years in some areas) backlog in land title and lease ownership determinations and record keeping.

Each time ownership changes, OTR's Land Title and Records program staff must perform time-consuming manual determination and documentation of ownership interests. This is because OTR's LRIS, as designed, is not capable of performing automated chain-of-title calculations and it does not store chain-of-title or calculated ownership information. LRIS system improvements have been delayed for the past two years due to reductions-in-force and budget cuts. In addition, LRIS is not integrated with OTFM's trust fund accounting systems.

Because official ownership information may be significantly out-of-date, OTFM has relied on unofficial ownership data in BIA's Integrated Resources Management System (IRMS). IRMS ownership information is periodically updated by OTR realty staff located in BIA's Agency Offices based on preliminary information that they have developed for use in probate determinations. However, unlike LRIS information, it is not verified or certified. As a result, OTFM cannot ensure that income is distributed to the proper account holder.

Inactive IIM accounts, which are defined as accounts with no transactions for 18 months, also increase the administrative burden for IIM accounts. Accounts may become inactive because they are in suspense status or because probate decisions are pending. As of

September 30, 1996, OTFM reported that there were approximately 60,823 inactive IIM accounts. According to information provided by OTFM, these are generally low balance accounts. Administrative costs associated with inactive accounts include:

- the cost of computer processing time;



- the administrative cost and responsibility of safeguarding the accounts; and
- the cost of preparing, printing, and mailing quarterly account statements.

Legislation is therefore needed which would consolidate the large number of existing fractionated interests and prevent further fractionation. This alone would remove a primary obstacle to the efficient administration of the trust management systems and provide a major catalyst for the timely resolution of most of the operational problems associated with trust management activities, including trust resource and realty management, probate, land titles and ownership records management, IIM accounting, collections, deposits, investments and disbursements, customer service and record keeping for all trust management activities. An added benefit is the annual administrative cost savings estimated at the same \$33 million mentioned above.

### **Confirming Views of Outside Public Accountants as to Trust Management Problems**

The May 17, 1996, Report of Independent Public Accounts on Financial Statements for the Office of Trust Funds Management had the following observations on Trust Management activities, all of which precluded an unqualified audit opinion:

1. Cash and overnight investments are maintained by a related U.S. Governmental Agency (U.S. Treasury) and cannot be independently confirmed.
2. Cash balances reflected in the accompanying financial statement are materially greater than balances reported by the U.S. Treasury.
3. Major inadequacies in the Trust Fund accounting system, controls and records caused them to be unreliable.
4. Various Tribal organizations and classes of Individual Indians for whom the OTFM holds assets in trust do not agree with certain OTFM accountings and balances recorded by the OTFM; and certain of these parties have filed, or are expected to file, claims against the Federal Government. This may result in a potential liability to the Federal Government so large that it is not reasonably estimable.  
Because of these matters, it was not practicable for the outside public accountant to extend its auditing procedures to enable them to express an opinion regarding the basis on which cash and trust fund balances are stated. The public accountant went on to observe:
5. In some instances, the OTFM has researched and corrected the balances held in trust for specific Indian Tribe, individuals, and Other Special Appropriation funds. Many individual Tribal and IIM accounts still need to be reconciled and/or resolved through negotiation and settlement before reliance can be placed on the balances reflected in the trust fund accounts.
6. A portion of the Beneficiaries for whom the Bureau holds assets in trust do not receive adequate information to determine whether their account balances reflected in the Bureau's records are proper. A significant number of IIM accounts and balances are held for the benefit of minors and other individuals who have been determined by the Bureau to require assistance in managing their trust account activities and balances. It is the practice of the Bureau to not forward financial data to minors and other IIM account holders with supervised accounts.

Agency Superintendents typically act as custodians for these supervised accounts. In addition, some IIM account holders have not furnished the Bureau their addresses which would allow the Bureau to forward their account statements. Accordingly, certain account holders do not, or are unable to, agree with the balances reflected in their accounts.

7. IIM account holders who have been determined by the Bureau to require assistance in managing their financial affairs have had instances of payments made from their accounts that have not been adequately reviewed and approved in accordance with applicable regulations. At many Bureau locations procedures are inadequate to ensure that such expenditures are made in accordance with applicable regulations.
8. Cash balances converted from the prior general ledger to Omni were approximately \$27 million higher than the balance per the U.S. Treasury. Cash reconciliation procedures only reconcile current activity from Omni to Treasury and do not address the unreconciled beginning balance. The composition of the difference is not known and no reliance has been obtained that either the OTFM balance or the Treasury balance is accurate. This results in an unconfirmed and unreconciled cash balance on OTFM's books.
9. The OMNI trust and investment system does not amortize premiums nor accrete discounts on investment purchases using the effective interest method as required by OMB 94-01, "Other Comprehensive Basis of Accounting." The amortization and accretion calculations must be computed separately and recorded as an adjustment at year end. This results in interim financial reporting which does not reflect the investment portfolios true yield.
10. The Budget Clearing Account with Treasury has a balance of about \$11.7 million, of which only about \$168,000 is reflected on OMNI. This is a shared account with the Division of Accounting Management and it cannot be determined at this time to whom the balances belong.
11. There is a difference between the general ledger summary account of IIM on OMNI and the total of the balances per the IIM subsidiary ledger detail. The difference was approximately \$30 million at September 30, 1995, with the general ledger carrying the higher balance. There are also negative cash balances on the IIM subsidiary system aggregating approximately \$46 million. The effect of the above items is to further substantiate the unreliability of the trust fund balances as reflected by OTFM.
12. A review of questionnaire responses from the Area and Agency Offices indicated that there is no consistency in the application of accounting processes and procedures. There were also inconsistencies reported in duties performed by certain key personnel at the Agency Offices, as well as inadequate segregation of duties. During the period under audit, staff in the Area and Agency Offices were supervised by the Bureau and did not report to the OTFM.
13. The accounting and internal control procedures used by the OTFM have suffered from a variety of system and procedural internal control weaknesses, and other problems, such as under staffed accounting operations at all levels, a lack of experienced accounting supervisors, a lack of minimum standards for key positions in the accounting process, inadequate training programs and inherent limitations in existing computerized accounting systems. In addition, current management is burdened with the ongoing impact of decades of accumulated errors in the accounting records. These factors place significant limitations on management's ability to effectively manage the trust funds entrusted to the OTFM.

14. The Bureau does not have an accounts receivable system in place. Currently, the Bureau has no assurance that all lease revenues are billed and subsequently collected. Such a system will provide reasonable assurance that earned revenues are billed, collected and posted to the appropriate beneficiary's account.

#### **Tribal/Federal IIM Work Group: Confirmation of Problems and Priority of Issues to be Addressed**

Over the course of several months during 1996 a combined Tribal/Federal Work Group, consisting of 19 tribal attendees and 12 Bureau of Indian Affairs' attendees, met to address IIM trust management problems and to prioritize categories for resolution. The Group met initially in New Mexico and concluded its work in January 1997 after regional hearings for IIM account holders were held in Tulsa, Phoenix, Portland, Oklahoma City, Bismarck and Albuquerque. After these consultation sessions, the top 5 priority categories were as follows:

#### **Tribal/Federal IIM Work Group Priority Categories January 8, 1997**

<b>Tribal/Non-Federal</b>	<b>Federal</b>	<b>Combined</b>
Accounting	Realty	Realty
Realty	Accounting	Accounting
Customer Service/Training	Records Management	Customer Service/Training
Policies & Procedure	Customer Service/Training	Records Management
Records Management	Policies & Procedures	Policies & Procedures

The work of the Tribal/Federal Work Group is another confirmation of the most serious problems and issues affecting trust management activities. The conclusions also demonstrate that any resolution of the trust management problems must start by addressing the realty issues, particularly fractionated ownership problems, accounting problems and records management. After that policies and procedures can be revised and extensive training conducted, ultimately to assure the customer service the American Indian trust beneficiaries deserve and to ensure the U.S. Government is meeting its trust obligations to the American Indians.

#### **Confirming Views of Macro International Inc.**

##### ***Macro International Inc. Executive Summary***

The OST Needs Analysis project was conducted by Macro International Inc. (prime contractor) and its subcontractors, Larson Slade Associates, LLC., and Arrowhead Technologies, Inc. from December 19, 1996 to April 7, 1997.

The primary purpose of the project was to provide the Office of the Special Trustee with an analysis of the various components of the American Indian Trust system (i.e., trust accounting, asset

management and land title and recordation) based on the perspective of the end users in the field (OST employees, BIA employees, Tribes, and others). In addition, the project included specific reporting on the gaps that exist between the current Indian Trust system and trust departments in the commercial sector; the features needed in a new system which meets commercial standards; the training needs and requirements of staff; the key business events used in day-to-day trust business; an inventory of the equipment needs of end users; and, a recommendation on whether existing Government capabilities are adequate to satisfy the needs and requirements of a new trust system.

The project was modified three times to add further reporting elements to its scope, including: a validation of the Conceptual Strategic Plan including cost estimates; an increased analysis of oil and gas assets management; a review of commercially available land title and recordation applications and service bureau support; revisions of the Strategic Plan budget; and the development of roles and responsibilities of a systems integration and overseer for the integration, implementation and sustained management of a new trust management system.

The primary means by which the Macro project team gathered such information was through site visits to 50 Tribal locations, 35 BIA agency offices, 8 BIA area offices, one BIA field office and the OTFM headquarters office in Albuquerque, NM. Approximately 350 confidential interviews were conducted; however, since some of these were recorded as "joint interviews" (two or more people participating in a single interview on a specific subject or function), only 330 official responses were recorded. These responses were entered into a database and compiled into analysis segments with all personal or location identification removed. Additional data was gathered from interviews with OST officials and staff, service bureau providers, project resource firms (Riggs Bank, NationsBank, State Street Bank and Trust), Tribal representatives, and others.

Data analysis consisted of a systematic review of the database responses and a review of information gathered from additional resources, reports, and interviews.

### ***Key Findings and Recommendations***

Based on the field interviews and the project team's review and analysis of trust-related data, four major findings were identified and recommendations developed. They include:

#### ***Fiduciary Responsibility***

The trust fiduciary responsibility to manage trust assets and accurately report on their status to beneficiaries is not being met. The existing trust system does not account for each and every asset under its responsibility and there is no method for gauging the accuracy of information depicting the assets for which they do account. The trust system is unable to provide the individual Indian account holder with a statement of assets and transactions for nonfinancial assets. A major deficiency in the existing system is the lack of accounting and control of the most important trust asset to the beneficiary--the land. In addition, responsibility for the management of trust accounting, asset management and land records rests with two different organizations, the Office of the Special Trustee and the Bureau of Indian Affairs. Without systems capability or, control of the most essential trust asset (land), and without single-point management responsibility, the current trust system cannot be considered operating at a commercial standard.

#### **Recommendations**

A single trust organization with management control over both resource and financial assets utilizing standard commercial applications programs to process data for trust asset and financial accounting, for land title and recordation, and for carrying out fiduciary responsibilities and reporting to American Indian Trust account holders.

New and updated policies, practices and procedures for implementation and operation of the new information technologies infrastructure.

Acquisition of a dial-up communications (WAN/LAN) network to link trust locations (regional, field, Tribes, MMS, and BLM) with the single trust organization.

Acquisition and upgrade of workstations with required hardware and software to enable all trust system staff and the 300 Tribal sites direct access to account information through the dial-up network.

### *Trust Data and Information*

Although a new commercial system will have the capability of processing current and historical land information, existing data relating to land ownership and valuation is not in suitable condition or is nonexistent. Land appraisals are out of date and, if they exist at all, are perceived by many owners to be inaccurate. There are major appraisal backlogs in most field locations.

American Indian properties are fractionated as a result of generation after generation of inheriting undivided lands. Some properties are fractionated to the 35th decimal and incomes are essentially zero or not accountable.

The filing, storage and retrieval process of hard copy documents is inefficient. There is an overabundance of documents (which are vulnerable to disaster) and a lack of facilities and trained personnel to safeguard and preserve them.

### *Recommendations*

A reconciliation of historical land titles and the appraisal of Indian lands must be completed before any new system can provide accurate information to account holders regarding this critical trust asset.

Enact legislation to resolve fractionated ownership.

Establish a national archives to image, store and retrieve official and historical documents.

Acquire and/or upgrade hardware and software equipment to enable field offices to image, store and retrieve documents.

Update and complete file jackets, records, and accounts to provide the new commercial trust system with accurate information for processing.

### *Organizational Staffing, Training & Development*

A new commercial trust system will have the capacity to process accounting, asset management and land information; the reconciliation of land titles and the appraisal of Indian lands will provide accurate

land records; a national archives will insure that official documents and historical trust records are maintained; a communications network will enable user access to trust information; and, hardware and software purchases and upgrades will enable the internal and external trust system users to image, store and retrieve documents. However, all of these important tasks will not, by themselves, improve the Indian Trust system unless an effective and efficient staff is able to carry out these tasks.

Field interviews indicated that recent reductions in staff have resulted in current employees being forced to handle tasks for which they have no formal training. On-the-job training is almost solely relied upon to prepare employees for their jobs. This has resulted in deficiencies in quality and timeliness of many work tasks. The concept of fiduciary trust responsibility is not readily apparent at OST and BIA field offices, although OST staff in Albuquerque are exceptions. While the effort of most employees is exemplary, many employees have responded to this difficult situation by either resigning themselves to never getting their jobs done correctly or becoming so achievement-oriented that they are nearing physical and mental exhaustion.

### Recommendations

Provide a variety of trust activities training related to improving job functions, improving customer service, understanding trust services, dealing with stress, and handling the transition of the current trust system to a new commercial system.

Implement functional improvement training on an on-going basis.

Conduct training related to the commercial trust transition to coincide with the "rollout" of the new system in the FY 1998-FY 2000 time frame.

Make a commitment to bolster the capability of the field offices by acquiring more staff with trust banking experience to provide needed technical support to fellow employees.

Establish a "help-desk" system from regional and central offices as additional backup and support to current field staff.

### *Administrative*

Two major administrative issues need to be resolved in order to improve the Indian Trust system. They are: resolve the probate backlog; and, resolve the relationship difficulties between OST and BIA field employees.

### Probate Process

The probate process takes much too long to complete due to fractionated land ownership, incomplete files and records, under staffing, and too few Office of Hearings and Appeals (OHA) and administrative judges to adjudicate the case load.

### Recommendations

Enact legislation to resolve fractionated land ownership.

Increase administrative staff levels to enable probate case information to be compiled in a more timely

manner.

Increase the number of administrative judges thereby increasing the number of probate cases that can be adjudicated annually.

#### OST/BIA Relationship

The relationship between OST and BIA field employees is strained and in need of immediate clarification. Agreements between these Organizations are required in such areas as staff roles, procedures, authority, and reporting relationships. This situation has resulted in employee frustration in both Organizations and a concern that preferential treatment is being received by one group or the other

#### Recommendations

Establish an agreement between the two Organizations to provide much-needed leadership and guidance to OST and BIA employees across the United States.

Establish a single organization with all trust activities under one manager.

See Appendix Two for the complete report of Macro International Inc.

#### **Summary Comment by Special Trustee**

Each of the trust management problems identified above and in this Condition Assessment is considered by the Special Trustee to be a material weakness and in need of reform as required by the American Indian Trust Fund Reform Act of 1994. Each is addressed generally and a reform solution is proposed in the general proposals contained in the Strategic Plan. The Appendix contains more specific proposals for each needed reform. Once the Strategic Plan is approved, a specific action plan will be written in the implementation phase to resolve each of the material weaknesses in the trust management systems identified in the Strategic Plan.